

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 565 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

H J MANDAVIA

Versus

MEDICAL SUPDT CIVIL HOSPITAL

Appearance:

1. Special Civil Application No. 565 of 1988
MR YN OZA for Petitioner No. 1
Mr. MA Bukhari, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 14/02/2003

ORAL JUDGEMENT

The present petition is filed by the petitioner seeking a writ of mandamus or any other appropriate writ, order, or direction in the nature of mandamus for quashing and setting aside the action of the respondents in discontinuing the services of the petitioner as Hon'rory Assistant Professor of Surgery at B.J. Medical College/New Civil Hospital, Ahmedabad and further seeking

direction to the respondents to forthwith restore the petitioner at the said post with continuity of service and all other consequential benefits flowing therefrom treating as if no order of discontinuation was passed.

2. The petitioner was appointed as Hon'rary Assistant Professor of Surgery in the year 1979. In the year 1985, one Dr. KL Sheth was promoted as Hon'rary Associate Professor of Surgery by ignoring the claim of the petitioner and hence the petitioner had filed a Special Civil Application No. 2066 of 1985 before this Court challenging the promotion of Dr. KL Sheth on the ground that the petitioner being the senior person he should be promoted instead of Dr. KL Sheth who was junior to the petitioner. However, the said petition was dismissed by this Court. Being aggrieved by the said order, the petitioner had filed Letters Patent Appeal No. 5168 of 1985 and the same was also dismissed. The petitioner thereafter took the matter to the Hon'ble Supreme Court by filing Special Leave Petition which was also dismissed. However, the Hon'ble Supreme Court, while dismissing the Special Leave Petition, has made the following observations;

"The Special Leave Petition is dismissed.

Dismissal of the petition will not stand in the way of the petitioner being considered for promotion as Associate Professor or Professor."

3. The petitioner was involved in these long drawn litigations and hence he had to remain on leave for instructing his Counsel and collecting other information which were relevant for the purpose of his case. Since the petitioner was on unauthorised leave after 21.3.86 the respondents have by their letter dated 6.5.1986 asked the petitioner to forthwith report for duty and submit the explanation for unauthorised absence. The petitioner was again asked to resume his duties by letter dated 6.5.1986. The petitioner was thereafter informed by the respondent No.1 vide his letter dated 25.7.1986 that if he failed to report his duties forthwith, it would be treated as disobedience of the orders of the higher authority and necessary action would be taken against him. The petitioner, thereafter, vide respondent's letter dated 22.9.86 was informed that since his unauthorised leave had exceeded 90 days, he should obtain prior permission of the Government before resuming his duties.

4. The petitioner has further submitted that the

respondent authorities have not permitted the petitioner to resume his duties even after writing several letters and even after sending notice through his advocate and hence the petitioner was constrained to file Special Civil Application No. 5811 of 1987 before this Court. During the course of hearing of this petition, the ld. advocate appearing for the respondents made a statement that there was no question of permitting the petitioner to resume his duties because his term had already expired on 31.12.86 and since it was not continued further, he was not permitted to resume the duties. In this view of the matter, the petitioner had withdrawn the said Special Civil Application with a view to challenge the action of the respondents in not continuing him in services, and that is how the present petition was filed.

5. At the time of hearing of this petition, it was contended by the ld. advocate appearing for Mr. YN. Oza, Senior Advocate for the petitioner that the correspondence exchanged between the petitioner and the respondent authorities revealed that prior to 31.12.86, the petitioner had submitted several letters to the respondents requesting that he was ready and willing to resume the duties and the record also would show that it was the respondents who were not permitting the petitioner to resume the duties and thereby deprived him of continuing in the service. It was further submitted that at the time when the contract was alive it was absolutely illegal and malafide on the part of the respondents for not permitting the petitioner to resume duties. It was also submitted that the respondents informed the petitioner that since the period of his unauthorised leave exceeded 90 days he should obtain permission from the Government for resuming duties. The petitioner had accordingly requested the Government but there was no reply from the Government. It was further submitted that though the ground for discontinuing the services of the petitioner was the unauthorised leave of the petitioner, the respondent authorities had changed their stand subsequently and raised a ground that since the period was over, the same was not renewed subsequently and hence the petitioner's services were not continued.

6. Mr. Bukhari, learned AGP appearing for the respondent on the other hand submitted that the Government had extended the period for continuing the system of appointing Hon'rary Professors in Medical Colleges. As per the Government Notification issued by Health & Family Welfare Department on 25.2.1982 the appointments are tenable for a period of 3 years subject

to termination by 3 months' notice on either side. It was further provided that subject to the Assistant Professor being found fit to continue to hold the post, the tenor of appointment may be extended for a period not exceeding 3 years from time to time till the age of 58 years. It was also provided in the said notification that candidates appointed by direct selection would be kept on probation for a period of one year. They may be continued in their appointment on the expiry of their provisional period if their work was found to be satisfactory. The appointment during or at the end of the period of probation, is liable to be discontinued by one month's notice without assigning any reason. It was further provided in the notification that where there is any thing against the Hon'rory Assistant Professor or on the score of carelessness, negligence, unpunctuality, neglect of emergency calls or irresponsiveness to administrative orders, he shall be asked to resign forthwith or one month's notice of termination of his appointment. Mr. Bukhari has submitted that in the case of the petitioner, the petitioner's services were not discontinued on the ground of any misconduct but since the petitioner was on unauthorised leave he was asked to obtain the approval from the Government and since the said approval was not obtained, the petitioner was not permitted to resume his duties and in the meantime the petitioner's appointment which was upto 31st December 1986 has come to an end and there was no question of continuing the petitioner on his original post. He has, therefore, submitted that the petitioner has no right to ask for renewal of his appointment as Assistant Professor of Surgery at the Medical College. The petition, therefore, should be dismissed by this Court.

7. After having heard the ld. advocate appearing for the petitioner as well as the ld. Assistant Government Pleader appearing for the respondent, I am of the view that the grievance raised by the petitioner in this petition is not sustainable. There is no denial of the fact that he was on leave for a long period and that too for fighting litigations at various stages. The petitioner was repeatedly asked to resume his duties and even then the petitioner had neglected to resume his duties. When the period of his unauthorised leave exceeded 90 days, the petitioner was asked to obtain approval from the Government and the said approval was not obtained by the petitioner. In such a situation, it is not permissible for the respondent authorities to allow the petitioner to resume his duties. Since the petitioner's period of appointment was over by the time the said dispute was resolved, the petitioner's

appointment was not renewed and the respondents have rightly not allowed the petitioner to resume his duties as the renewal of the service agreement was to be done by the Government and that too at the discretion of the Government. This Court, while exercising the powers under Article 226 of the Constitution of India, cannot direct the Government to renew the service agreement of the petitioner. It is a policy decision of the Government made applicable to the petitioner and all other similarly situated persons. There is nothing on record which would show that the Government has not exercised its discretion in a just and proper manner. The judicial review of such an administrative decision is not permitted especially when there is no infirmity found in such decision. Taking overall view of the matter and considering the submissions of both the sides as well as the documents placed before this Court and also the outcome of the earlier litigations, I am of the view that there is no merit or substance in the present petition and hence the petition is dismissed. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]